



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2022-0785, FRL-10210-01-R2]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program; Diesel Opacity Cutpoints

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection (NJDEP) in 2009 for New Jersey's motor vehicle inspection and maintenance (I/M) program. A final rule for this proposal would complete EPA's action on this submitted SIP revision and maintain consistency between the State adopted rules and the federally approved New Jersey SIP.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2022-0785 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Reema Loutan, Technology, Transportation, and Radiation Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3760, or by email at *Loutan.Reema@epa.gov*.

SUPPLEMENTARY INFORMATION:

- I. What action is the EPA proposing?
- II. What is the purpose of the submitted rules?
- III. What are the EPA's conclusions?
- IV. Statutory and Executive order reviews

I. What Action is the EPA Proposing?

The EPA is proposing to approve a revision to the New Jersey State Implementation Plan (SIP), submitted by New Jersey on July 20, 2009, pertaining to New Jersey's motor vehicle inspection and maintenance (I/M) program. This July 20, 2009 SIP revision submittal consisted of rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. Title 7, Chapter 27, Subchapter 14, titled "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles (Diesel-Powered Motor Vehicle Inspection and Maintenance Program)," at sections 14.2, 14.4 and 14.6, and related amendments to the "Sampling and Analytical Procedures" at N.J.A.C. Title 7, Chapter 27B, Subchapter 4, titled "Air Test Method 4: Testing Procedures for Diesel-Powered Motor Vehicles," at section 4.5. Section 7:27B-

4.5, which provided for an alternative smoke opacity test standard for model year 1973 and older diesel-powered motor vehicles, has since been rescinded. New Jersey adopted these amendments to encourage increased diesel engine maintenance and repairs, thereby reducing the amount of particulate matter (PM) and other pollutants emitted from diesel engines. Rules approved into the SIP must be enforceable (*see* CAA section 110(a)(2)), must not interfere with applicable CAA requirements including attainment of the national ambient air quality standards (NAAQS) or reasonable further progress toward attaining the NAAQS (*see* CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (*see* CAA section 193). When submitted in 2009, EPA deferred acting on this SIP revision. However, since the 2009 SIP submittal, New Jersey has made several amendments to its I/M program to improve program performance, and a subsequent SIP revision for the diesel opacity program was approved by EPA and supersedes the July 20, 2009, SIP revision submittal. *See 83 FR 21174* (May 9, 2018).

Consistent with EPA's 2018 approval of the State's current opacity cutpoint regulations, the rules in the 2009 SIP submission meet CAA requirements and are consistent with relevant guidance regarding SIP revisions and the enforceability of state rules. The standards set forth in the rules listed above are more stringent than the opacity standards set forth in the EPA's guidance to states.¹ Further, while EPA's 1999 guidance establishes recommendations for states to uniformly establish opacity standards, states have authority under CAA section 209(d) to establish their own in-use standards for motor vehicles.

II. What is the Purpose of the Submitted Rules?

Emissions of PM, including PM equal to or less than 2.5 microns in diameter

¹ *See* "Guidance to States on In-Use Smoke Test Procedure for Highway Heavy-Duty Diesel Vehicles," EPA OAR, April 3, 1997, and "Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedure," EPA OAR, February 25, 1999.

(PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to harmful impacts to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations for controlling PM emissions. On July 20, 2009, New Jersey submitted to EPA a revision to its SIP pertaining to revisions to the New Jersey I/M program. The 2009 submittal consisted of rules and rule amendments to the New Jersey Department of Environmental Protection's rules regarding diesel opacity cutpoints, visible smoke standard for diesel-powered trucks and buses, and exemptions for emergency vehicles. A subsequently approved SIP revision, submitted to the EPA on September 16, 2016, implemented changes to New Jersey's I/M program that include procedures for diesel exhaust after-treatment checks, repealed the rolling acceleration smoke opacity test and the power brake smoke opacity test, and retained only the snap acceleration smoke opacity test.

In addition to the rule changes, NJDEP identified emission reduction credits associated with the program in the July 20, 2009, SIP revision. The EPA is not proposing to approve any emission reduction SIP credit under this rule, for this purpose, at this time, but the State may resubmit a SIP revision to recognize the SIP credit if and when fully developed, available, complete, and quantifiable. There are research efforts supporting the development of emissions quantification methods for heavy-duty inspection and maintenance programs.

III. What are the EPA's Conclusions?

The EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the CAA and 40 CFR part 51. The EPA is proposing to approve the rules and rule amendments to the New Jersey Department of Environmental Protection's rules proposed in the July 20, 2009,

SIP revision for N.J.A.C. 7:27-14 and 7:27B-4, with the acknowledgement that this program is superseded by the current New Jersey diesel program that was approved by the EPA on May 9, 2018 (83 FR 21174). The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, addressing New Jersey opacity standards for diesel-powered motor vehicles is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Lisa Garcia,
Regional Administrator,
Region 2.

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